Supreme Court, U.S.
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No. 04-744

IN THE

Supreme Court of the United States

ANGEL J. MIYARES,

Petitioner,

v.

FORSYTH COUNTY and C. TIMOTHY MONROE, M.D.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NORTH CAROLINA

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Petitioner was employed by the Forsyth County, North Carolina Department of Social Services from 1986 to 2001. In June 2001, respondent Dr. Timothy Monroe became the Forsyth County Health Director. Petitioner and Dr. Monroe clashed over various work-related issues. On November 7, 2001, petitioner was informed that his position was being eliminated effective December 7, 2001 in connection with a reduction in force.

After petitioner's termination, his legal claims proceeded on two different tracks. On the first track, petitioner filed a petition for a contested case hearing with the North Carolina Office of Administrative Hearings. In his petition, petitioner claimed he was terminated without just cause, in retaliation for filing a grievance against Dr. Monroe, and as a result of discrimination on the basis of his national origin, age, and disability. An administrative law judge ("ALJ") held a full evidentiary hearing that lasted four days and heard testimony from sixteen witnesses and received over forty exhibits. The ALJ issued a recommended decision to the North Carolina State Personnel Commission ("SPC") in which he concluded that plaintiff was terminated for just cause and that plaintiff had failed to prove his claims of discrimination and retaliation. The ALJ recommended that the SPC adopt his findings and conclusions. The SPC then issued a decision agreeing with the ALJ and recommending that the Forsyth County Health Department adopt the ALJ's decision. Dr. Timothy Monroe, as Health Director, issued the local appointing authority's final agency decision, adopted the ALJ's and SPC's recommendations, and found no discrimination in connection with plaintiff's termination. Petitioner appealed to state superior court for judicial review.

On judicial review of Dr. Monroe's final agency decision, the North Carolina state superior court held that Dr. Monroe was not an appropriate decision-maker and remanded the matter to the Forsyth County Board of Health for entry of a final agency decision. Respondents originally appealed this superior court decision to the North Carolina Court of Appeals. While that appeal was pending and before the North Carolina Court of Appeals made any ruling, the respondents voluntarily dismissed their appeal and complied with the state superior court's order. In conformity with the superior court's order, the Board of Health reviewed the matter as the local appointing authority and issued a final agency decision. The Board of Health adopted the SPC's recommendation and incorporated its findings and conclusions. Specifically, the Board of Health found petitioner's termination was not the result of discrimination. Although petitioner originally appealed the Board of Health's final agency decision to state superior court, petitioner has since voluntarily dismissed that appeal.

About the same time that petitioner filed his petition for a contested case hearing before the North Carolina Office of Administrative Hearings, he also filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging that his termination was the result of national origin, disability, and age discrimination. Upon receiving the EEOC's no cause finding and notice of right to sue, petitioner filed this action in North Carolina state court, alleging claims of national origin, age, and disability discrimination under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act ("ADEA"), and the Americans with Disabilities Act ("ADA").

In the present action, the respondents moved for summary judgment arguing that the previous ALJ, SPC, and final agency decision finding no discrimination had collateral estoppel effect on petitioner's national origin, age, and disability discrimination claims in this case. Although the state trial court denied the respondents' motion, the respondents appealed. In an unpublished decision, the North Carolina Court of Appeals unanimously held that petitioner's claims in this action are barred by principles of collateral estoppel. *Miyares v. Forsyth County*, __ N.C. App. __, 600 S.E.2d 899, 2004 WL 1611494, *2 (unpublished), *disc. rev. denied*, 359 N.C. 69, 604 S.E.2d 668 (2004). Petitioner then petitioned the North Carolina Court of Appeals for a rehearing. In his petition for rehearing, petitioner argued that *University of Tennessee v. Elliot*, 478 U.S. 788, 106 S. Ct. 3220 (1986), controlled and prevented the application of collateral estoppel in this case. However, petitioner admitted that he was raising the *Elliot* case for the first time in his petition for rehearing. The North Carolina Court of Appeals denied the petition for rehearing. Petitioner then sought discretionary review by the North Carolina Supreme Court, but that petition was also denied. *Miyares*, 359 N.C. 69, 604 S.E.2d 668.

Petitioner now seeks a writ of certiorari from this Court.

REASONS FOR DENYING THE PETITION

In his petition for writ of certiorari, petitioner contends that the decision of the North Carolina Court of Appeals is in conflict with this Court's decision in *University of Tennessee v. Elliot*, 478 U.S. 788, 106 S. Ct. 3220 (1986). However, the present case is distinguishable from the *Elliot* decision petitioner cites. Therefore, the decision of the North Carolina Court of Appeals is not in conflict with *Elliot* and this Court should deny the petition for writ of certiorari.

In *Elliot*, a former employee of the University of Tennessee contended his termination was motivated by race discrimination. 478 U.S. at 790, 106 S. Ct. at 3222. When the employee requested a hearing to contest his termination, a state administrative law judge held a hearing and determined that the employee's discharge was not racially motivated. *Id.* at 791, 106 S. Ct. at 3222. The employee did not seek review of the administrative decision in state court. *Id.* at 792, 106 S. Ct. at 3222. While these administrative proceedings were pending, the employee in *Elliot* had filed a Title VII and 42 U.S.C. § 1983 action in federal court contending that the University had discriminated against him on the basis of his race.

The United States Supreme Court stated that the issue on appeal in *Elliot* was whether the administrative findings of the ALJ were "entitled to preclusive effect ***in federal court***, where respondent has raised discrimination claims under various civil rights laws, including Title VII of the Civil Rights Act of 1964 . . ." *Elliot*, 478 U.S. at 790, 106 S. Ct. at 3221-22 (emphasis added). The Court in *Elliot* concluded that "Congress did not intend unreviewed state administrative proceedings to have preclusive effect on Title VII claims" in

federal court. *Id.* at 796, 106 S. Ct. at 3225. In reaching this conclusion, the Court analyzed its previous decision in *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 102 S. Ct. 1883 (1982). The Court in *Kremer* determined that final state court judgments are entitled to full faith and credit, and therefore preclusive effect, in Title VII actions in federal court. Regarding unreviewed determinations by state agencies, the Court in *Kremer* stated:

> Since it is settled that decisions by the EEOC do not preclude a trial *de novo* in federal court, it is clear that unreviewed administrative determinations by state agencies also should not preclude such review ***even if such a decision were to be afforded preclusive effect in a State's own courts.***

Kremer, 456 U.S. at 470 n.7, 102 S. Ct. at 1891 n.7 (emphasis added) (*quoted with approval in Elliot*, 478 U.S. at 793, 106 S. Ct. at 3223).

This language from *Kremer*, which was quoted and relied upon in *Elliot*, indicates that an unreviewed state administrative determination may have preclusive effect in a state court discrimination case even though it would not have preclusive effect if the discrimination case were filed in federal court. Thus, the fact that petitioner in the present case filed his Title VII action in state court rather than federal court is a critical distinguishing factor which renders the *Elliot* decision inapplicable. If petitioner had wanted to ensure that the previous decisions of the ALJ, the SPC, Dr. Monroe, and the Board of Health did not have preclusive effect on his Title VII, ADA and ADEA claims, he was perfectly free to file them in federal court. He did not do so and should not now be heard to complain about his own choice of forum.

Elliot and *Kremer* indicate that an unreviewed state administrative determination may be afforded preclusive effect in discrimination cases filed in state courts. The North Carolina Court of Appeals did exactly that when it held that the final agency decision finding no discrimination against petitioner in connection with his termination had preclusive effect on petitioner's subsequent discrimination claims in his state court action. *Miyares*, 2004 WL 1611494. Moreover, the North Carolina Court of Appeals' decision in *Miyares* was in accordance with the North Carolina Supreme Court's decision in *Maines v. City of Greensboro*, 300 N.C. 126, 265 S.E.2d 155 (1980). The plaintiff in *Maines* was a Greensboro firefighter who was notified he was in violation of the department's residency requirement. Plaintiff attended a departmental hearing where he challenged the allegation that he was in violation of the residency requirement. The hearing officer determined that Maines was in violation and terminated Maines' employment. Maines appealed to the City Manager, who upheld the termination decision. Maines then filed a separate declaratory judgment action in state court contending he was unlawfully discharged. The North Carolina Supreme Court in *Maines* noted that plaintiff had not sought judicial review of the administrative determination that he was in violation of the residency requirement. *Id.* at 133, 265 S.E.2d at 160. Accordingly, the Court in *Maines* concluded, "The general rule is that an essential issue of fact which has been litigated and determined by an administrative decision is conclusive between the parties in a subsequent action. We are therefore bound by the determination that plaintiff moved outside the City limits of Greensboro." *Id.* (citations omitted).

Thus, the North Carolina Court of Appeals properly held that the unreviewed administrative decisions by the ALJ, SPC, and Forsyth County Board of Health that petitioner Miyares had not been discriminated against in his termination had collateral estoppel effect on his Title VII, ADA, and ADEA claims filed in state court. That decision was in accordance with the mandates of the North Carolina Supreme Court's decision in *Maines*. Furthermore, the decision of the Court of Appeals was not in conflict with this Court's decisions in *Elliot* and *Kremer* but was instead permitted by those decisions. Accordingly, this Court should not review the decision of the North Carolina Court of Appeals but instead should deny the petition for writ of certiorari as the decision of the North Carolina Court of Appeals was proper and appropriate under United States Supreme Court precedent.

CONCLUSION

Wherefore, the Respondents respectfully request that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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